

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER PIERCE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-06-375-R
	)	
RAY ROBERTS and PHIL KLINE,	)	
	)	
Respondents.	)	

**REPORT AND RECOMMENDATION**

In this habeas action, a Kansas prisoner challenges the execution of his Kansas sentence.<sup>1</sup> According to the petition, Mr. Pierce had been temporarily housed in Oklahoma.<sup>2</sup> During that time, the Petitioner allegedly sent the Oklahoma Pardon and Parole Board documents proving his innocence, and Oklahoma officials were going to grant him parole on his Kansas conviction.<sup>3</sup> Before he could be paroled, Mr. Pierce was transferred to

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<sup>1</sup> Mr. Pierce filed the petition on a 28 U.S.C. § 2254 form. *See* Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody (Apr. 6, 2006). While the Petitioner maintains his innocence, he is not attacking his Kansas conviction. Instead, Mr. Pierce is challenging a prison transfer, which allegedly interrupted his pending parole. *See id.* at p. 6. This claim is governed by 28 U.S.C. § 2241. *See United States v. Furman*, 112 F.3d 435, 438 (10th Cir. 1997) (claims “concerning . . . parole . . . , go to the execution of sentence and, thus, should be brought against defendant’s custodian under 28 U.S.C. § 2241”).

<sup>2</sup> Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 & Exhibit C (Apr. 6, 2006).

<sup>3</sup> Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 (Apr. 6, 2006).

Kansas.<sup>4</sup> Thus, the Petitioner seeks an “order releasing him from incarceration.”<sup>5</sup> The Court should transfer the action to the District of Kansas.

The Court must have jurisdiction over the Petitioner’s custodian.<sup>6</sup> Mr. Pierce was convicted in Kansas, and his Kansas custodian is not subject to jurisdiction in the Western District of Oklahoma.<sup>7</sup> Thus, the Court should transfer the action to the District of Kansas in the interest of justice.<sup>8</sup>

The Petitioner is advised of his right to object to this report and recommendation by May 4, 2006.<sup>9</sup> If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma.<sup>10</sup> The Petitioner is further advised that if he does not timely object, he would waive his right to appeal the suggested transfer to the District of Kansas.<sup>11</sup>

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<sup>4</sup> Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 (Apr. 6, 2006).

<sup>5</sup> Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 (Apr. 6, 2006).

<sup>6</sup> See *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973).

<sup>7</sup> See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“In habeas challenges to *present* physical confinement, . . . , the district of confinement is *synonymous* with the district court that has territorial jurisdiction over the proper respondent.” (emphasis in original)); see also *Griggs v. United States*, 79 Fed. Appx. 359, 362 (10th Cir. Oct. 17, 2003) (unpublished op.) (Western District of Oklahoma lacked jurisdiction over a 2241 petition when the petitioner was housed in Texas).

<sup>8</sup> See 28 U.S.C. § 1631 (2000).

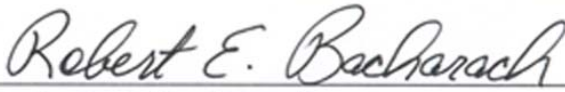
<sup>9</sup> See W.D. Okla. Local Civil Rule 72.1(a).

<sup>10</sup> See *Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999).

<sup>11</sup> See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral to the undersigned has been terminated.

Entered this 14th day of April, 2006.

A handwritten signature in cursive script, reading "Robert E. Bacharach", written in black ink. The signature is positioned above a horizontal line.

Robert E. Bacharach

United States Magistrate Judge